guardian; that the bankrupt described the property as his in a lease. The referee's opinion upon this evidence is thus stated: "Viewing the statements, purported to have been made by Mrs. Liphart, in the light of the language used by the court in the case of Miller *v.* Jeffress, supra, it is clear to my mind that the same are merely testamentary; and mere testamentary declarations upon the part of the donor, unaccompanied by delivery of the property, will not sustain a gift causa mortis. There must be a delivery of the property to the donee, or some one for him, at the time of the gift, and the title, though a defeasible one, must vest as of the time of the gift; otherwise the donor's declarations will be considered as testamentary only. Thomas' Administrator *v.* Lewis et al., 89 Va. 1, 15 S. E. 389, 18 L. R. A. 170, 37 Am. St. Rep. 848."

In the case of Jones *v.* Irvin, 4 Va. Law Reg. 525, a case decided by the corporation court of Danville, Va., it was held that such a gift was not established as there was no delivery of the property to the donee or his agent. The doctrine of gifts of personalty has been luminously considered in this state in late years. It is unnecessary to cite the different cases, but that of Spooner *v.* Hilbish, 92 Va. 333, is one of the latest. A most admirable statement of the doctrine applicable to both gifts inter vivos and causa mortis, by Professor Graves, prepared when he was one of the editors of the Law Register, can be found in the first volume of that magazine, page 882. This learned and elaborate summary, in which the Virginia and many other cases are cited, shows that the delivery of the subject, actual or constructive, is essential to sustain a gift of any character of personal estate. See also discussion in 2 Va. Law Reg. 689; note 10 Va. Law Reg. 1031.

Bankruptcy—Status of Trustee—Bailey *v.* **Baker, etc., Co., 36 U. S. Sup. Ct. Rep., 50.**—The trustee in bankruptcy takes the status of a creditor holding a lien as of the time when the petition in bankruptcy is filed, under the provision of the bankrupt act, that a trustee in bankruptcy "as to all property in the custody, or coming into the custody, of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings."

The court in this case said: "When not otherwise specially provided, the rights, remedies, and powers of the trustee are determined with reference to the conditions existing when the petition is filed. It is then that the bankruptcy proceeding is initiated, that the hands of the bankrupt and of his creditors are stayed, and that his estate passes actually or potentially into the control of the bankruptcy court. We have said: 'The filing of the petition is an assertion of jurisdiction with a view to the determination of the status of the bankrupt and a settlement and distribution of his estate. The exclusive jurisdiction of the bankruptcy court is so far in rem that the

estate is regarded as in custodia legis from the filing of the petition.' Acme Harvester Co. *v.* Beekman Lumber Co., 222 U. S. 300, 307, 56 L. Ed. 208, 213, 32 Sup. Ct. Rep. 96. * * * Had it been intended that the trustee should take the status of a creditor holding a lien by legal or equitable process as of a time anterior to the initiation of the bankruptcy proceeding, it seems reasonable to believe that some expression of that intention would have been embodied in § 47a as amended."

And see the case of Everett *v.* Judson, 228 U. S. 474, 479, 57 L. Ed. 927, 929, 46 L. R. A. (N. S.) 154, 33 Sup. Ct. Rep. 568, in support of the proposition "that the purpose of the law was to fix the line of cleavage with reference to the condition of the bankrupt estate as of the time at which the petition was filed, and that the property which vests in the trustee at the time of adjudication is that which the bankrupt owned at the time of the filing of the petition." See Zavelo *v.* Reeves, 227 U. S. 625, 631, 57 L. Ed. 676, 678, 33 Sup. Ct. Rep. 365, Ann. Cas. 1914D, 664.

Condition Sale — Recordation — Preferential Transfer. — Another question of interest in this case arose in this way: It was contended on the part of the Trustee in Bankruptcy that the filing of the contract of conditional sale operated as a preferential transfer. It was claimed by the trustee that before the contract was filed for record, the property therein described was subject to have been levied upon for the debts of the purchaser and that if the contract had not been recorded prior to the filing of the petition in bankruptcy the trustee in bankruptcy would have retained the property. The court, however, held that the contract itself did not operate as a preferential transfer because under the contract nothing passed from the seller to the purchaser.

A petition for rehearing was filed in which counsel insisted that it was not the contract so much that operated as a preferential transfer as the delay recording thereof at a time when by reason of the non-recording, a right was existing on the part of creditors to levy on the property and claim the property as against the seller.

On January 10, 1916, the petition for rehearing was denied, no opinion being filed, and hence it would seem that the court has announced the doctrine that where a contract of conditional sale is delayed in recording, the recording thereof does not operate as a preferential transfer because by the contract itself nothing passed from the seller to the purchaser.

Secret Commissions—Tips.—The Court of Special Sessions of the City of New York, in The People of the State of New York *v.* Albert Davis, held that that portion of section 439 of the Penal Law which forbids a purchasing agent to receive from a seller a commission or bonus on a sale made through such purchasing agent acting on behalf of his employer, and likewise forbids a seller to give or